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Before the  
Federal Communications Commission  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of:

Policy and Rules Concerning the  
Interstate, Interexchange, Marketplace

Implementation of Section 254(g) of the  
Communications Act of 1934, as Amended

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) CC Docket No. 96-61  
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To: The Commission

COMMENTS OF AD HOC COALITION OF  
CORPORATE TELECOMMUNICATIONS MANAGERS

Ad Hoc Coalition of Corporate  
Telecommunications Managers

by

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April 25, 1996

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### SUMMARY

In these comments, an ad hoc coalition of 11 corporate telecommunications managers urges the Commission to eliminate the obligation of any company providing interstate non-access telecommunications service, including any dominant carrier, to file tariffs. The coalition's recommendation thus varies from the proposal made by the Commission in its Notice of Rulemaking since the Commission proposed to eliminate tariffing only for non-dominant carriers. The comments demonstrate why the public interest justifies eliminating the tariffing obligation for all carriers.

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COMMENTS OF AD HOC COALITION OF  
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These comments, on behalf of an ad hoc coalition of 11 corporate telecommunications managers, discuss the Commission's proposal to permit all non-dominant providers of interstate service to offer that service without filing tariffs.<sup>1/</sup> The effect of the Commission's proposal would be to give everyone but the Bell companies an opportunity to provide interstate service without filing tariffs since the agency already provides a mechanism by which companies other than Bell companies can be treated as non-dominant. While the FCC has proposed a mechanism that would allow a Bell company to be treated as non-dominant in its provision of interstate service to customers outside of the Bell company's local exchange service area,<sup>2/</sup> the agency does not provide a mechanism by which

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<sup>1/</sup> Notice at ¶¶19, 22. For purposes of these comments, the term "interstate service" means interstate non-access service.

<sup>2/</sup> See Bell Operating Co. Provision of Out-of-Region Interstate, Interexchange Services, Notice of Proposed Rulemaking, FCC 96-59 (rel. Feb. 14, 1996).

a Bell company can be treated as non-dominant in its provision of interstate service to customers inside of its exchange area.

For reasons discussed below, we urge the Commission to permit both dominant and non-dominant carriers to offer interstate service on an untariffed basis. The result would be that all carriers, including Bell companies (once they are authorized to provide interstate service to customers in their exchange areas), would offer that service without filing tariffs. Bell companies would offer interstate service without tariffs even if they must abide by other regulations applicable to dominant carriers.

Corporate telecommunications managers have an interest in the issue of whether interstate service providers must file tariffs since they manage telecommunications networks and services for large consumers of interstate service. The 11 corporate telecommunications managers on whose behalf these comments are filed are named on Attachment 1.

#### DISCUSSION

Section 10(a) of the Communications Act prohibits the FCC from applying any specific telecommunications regulation, including tariff regulation, which is unnecessary under the three-part test set forth in that section.<sup>3/</sup> As shown below, the FCC should not apply tariff regulation to a Bell company's in-region interstate service (regardless of whether the Bell company is treated as a dominant carrier) because tariff regulation is unnecessary under each element of that three-part test.

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<sup>3/</sup> 47 U.S.C. §160(a).

Tariff regulation of a Bell company's in-region interstate offering clearly is not necessary under the first element of the test for regulatory forbearance. That element asks whether the specific regulation in question is necessary to ensure that the terms under which the subject carrier offers interstate service are reasonable. Once a Bell company begins providing interstate service to customers within its exchange area, tariff regulation will be unnecessary to ensure that service is offered on reasonable terms for two reasons. First, the Communications Act prohibits a Bell company from providing interstate service within its exchange area until after its ability to leverage exchange service market power into interstate service is substantially dissipated. The Act does this by permitting a Bell company to provide such service only after the FCC grants the Bell company's application to provide such service and by prohibiting the FCC from granting that application until after that particular Bell company's exchange service market is fully open to competition.<sup>4/</sup>

Even if the Bell company were to have some residual power in the exchange market at the time the Commission approves its application to provide interstate service, the Communications Act still ensures, without tariff regulation, that the Bell company will provide interstate service on reasonable terms. The Act does this by (a) mandating that the Bell company provide interstate service through a different corporation than the one through which it provides exchange service, (b) requiring that this interstate service

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<sup>4/</sup> 47 U.S.C. §§251(a)-(c), 252(d), and 271(c)-(d).

affiliate maintain separate books, and (c) requiring that the interstate service affiliate deal with its affiliated exchange carrier on an arms-length basis.<sup>5/</sup>

Tariff regulation of a Bell company's in-region interstate service is unnecessary under the second element of the three-part test for regulatory forbearance as well. That element asks whether the particular regulation in question is necessary to protect consumers of interstate service. Rather than protect consumers, tariff regulation of a Bell company's in-region interstate service actually would hurt consumers in several ways. First, tariff regulation would hurt consumers by facilitating price coordination, rather than vigorous price competition, among interstate service providers. The fact that incumbent interstate carriers often change service pricing in lock-step is evidence that tacit price coordination occurs, and the advance notice of price changes required by tariff regulation obviously increases the risk of such coordination. Eliminating the tariffing requirement for all interstate service providers, including Bell companies, would reduce this risk.<sup>6/</sup> Tariff regulation of a Bell company's in-region interstate service also would hurt consumers because it would slow the ability of the Bell company to respond to competition by

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<sup>5/</sup> 47 U.S.C. §272(a)-(c).

<sup>6/</sup> Since additional facilities-based interstate service competition also will reduce the risk of price coordination as the Commission recognizes (Notice at ¶81), the agency can substantially eliminate the risk of price coordination only by eliminating the tariffing requirement for all interstate service providers and by granting the Bell companies' forthcoming applications to provide in-region interstate service as well.

requiring the FCC to review any new service plan or rate change before it goes into effect.<sup>2/</sup> Tariff regulation of the Bell company's interstate service likewise would hurt consumers because it would impose costs on the Bell company by forcing it to operate more inefficiently than is necessary to serve a valid policy.

Tariff regulation of a Bell company's in-region interstate services is unnecessary under the final element of the three-part test for regulatory forbearance as well. That element asks whether the particular regulation in question is "consistent with the public interest". Rather than being consistent with the public interest, tariff regulation of a Bell company's in-region interstate service actually would be inconsistent with the public interest for several reasons. First, tariff regulation would be neither necessary to ensure that a Bell company's terms of service are reasonable nor required to protect consumers for reasons explained above. Tariff regulation also is inconsistent with the public interest because it would violate the deregulatory philosophy of the Telecommunications Act of 1996. The core purpose of that Act is to promote telecommunications competition by opening markets to competitive entry and by deregulation, not by regulation. Finally, tariff regulation of a Bell company's in-region interstate service would be inconsistent with the public interest because it would require the Commission to use its scarce resources to review tariff

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<sup>2/</sup> See, e.g., 47 C.F.R. §61.58(d)(2) (providing that tariffs proposing to change the price of an existing service or to add a new service be filed at least 45 days before the new price or new service goes into effect).

filings rather than on matters which will have a more profound impact on the telecommunications marketplace.

CONCLUSION

Bell company participation in the interstate service market as new facilities-based competitors should stimulate competition in that market substantially since Bell companies have the resources and expertise necessary to be aggressive competitors. However, the competition which Bell company involvement can stimulate will be muted for reasons discussed above unless the Commission refrains from imposing tariff regulation on those companies' in-region interstate telecommunications service offerings.

Respectfully submitted,

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Telecommunications Managers

by: 

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April 25, 1996



Attachment No. 1

<u>Name</u>	<u>Title</u>	<u>Corporation</u>
Richard Avila	Director, Telecommunications	American Stores, Inc.
John P. Viher	Manager, Communications Services	Bridgestone/Firestone Inc.
Donald T. Wiczek	Office Manager	The Copps Corp.
Richard H. Manser	Mgr. Corporate Telecommunications	The Gillette Company
Ronald D. Wolesslagle	Staff Member - Telecommunications	GPU Service Corp.
Bob Lane	Assistant V.P.	National City Bank, Indiana
G.J. Sniffen, Jr.	Assistant V.P. Communications and Signals	Norfolk Southern Corp.
Ray Novak	Director, Telecommunications	Robinsons-May
James W. Pelner	Telecommunications Manager	ShopKo Stores, Inc.
J.R. Sheedy	Director Corporate Telecommunications	Walgreen Co.
Keith A. Farnham	Telecommunications Manager	Zurn Industries, Inc.